



Oregon

Kate Brown, Governor

Oregon Department of Corrections

Office of the Director
2575 Center Street NE
Salem, OR 97301-4667
Voice: 503-945-0927
Fax: 503-373-1173

July 18, 2019



Dear Joel,

Thank you for your July 16, 2019 email correspondence regarding DRO's investigative report concerning the death of Michael Barton. As I hope you know and understand from our interactions together over a period of years, my management team and I take all deaths of adult in our custody seriously, including Mr. Barton's. We know and understand that Mr. Barton's death has profoundly and personally concerned and affected several of his peers and neighbors, as well as ODOC staff. At ODOC we are committed to critical examination and review of the care, treatment and services we provide to the adults in our custody. As such, we welcome DRO's review of Mr. Barton's medical care and treatment and the circumstances of his death in our custody.

As you know, I have greatly appreciated the collaborative working relationship that our respective organizations have forged with one another. As you yourself and former DRO Executive Director Bob Joondeph have expressed to me personally and to my management team (and to our attorneys at DOJ), our relationship has been an example of how DRO and a state agency can work together to identify and overcome difficult challenges to achieve common goals – here, significant improvements in the care, treatment and conditions of confinement for men and women who are confined in Oregon's prisons who are experiencing serious mental illness and disabilities; improvements in outcomes for these adults in our custody; and, safer and improved working environments and conditions for our employees. It is a relationship that I and my management team at ODOC have consciously chosen to pursue with DRO because we believed that doing so would best serve the interests of our adults in custody, employees, and the public.

With that history in mind, I am surprised and disappointed by the approach DRO has taken in this matter—giving ODOC a single business day (until July 18, 2019, 9 a.m.) to review a 27-page investigative report and provide feedback on any factual inaccuracies or other objections, and without any meaningful collaboration or discussion. Those time constraints render practically impossible our ability to meaningfully review and respond to the information contained in the draft report.

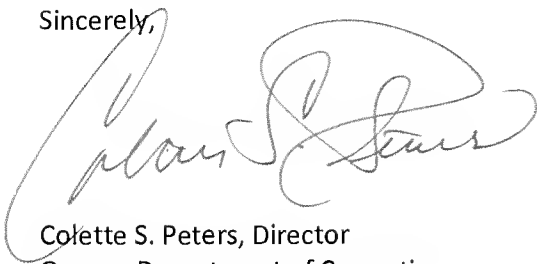
Based on our limited review to date, we have identified significant factual inaccuracies and omissions in the draft report, which likely come from what appear to us to be the limited sources DRO used in preparing its report, i.e., accounts and perceptions expressed by five individuals consisting of adults in custody and non-medical staff, and from an incomplete understanding of the information contained in Mr. Barton's medical records. We do not believe that a fair review and understanding of the facts and circumstances supports the conclusion that ODOC was negligent, or that, as DRO asserts (on page 22) that ODOC fosters a culture in which ODOC nurses "see patients with cognitive and mental health disabilities as less than human."

Setting aside the significant inaccuracies and omissions in the report, ODOC also objects to the report's discussion of and quotation from ODOC's peer review communications. DRO's decision to include the contents of ODOC's peer review communications in its draft report is deeply troubling. Having a robust and candid peer-review process is crucial for identifying areas for improving practices and patient outcomes. The peer review/quality assurance process is so important that the Oregon Legislative Assembly created a privilege for peer review communications and records in ORS 41.675. DRO's public disclosure of such communications in its report may violate these provisions, and could also violate provisions of state law that prohibit re-disclosure of protected health information in ORS 179.495 and 179.505. Moreover, even if public disclosure of ODOC's peer review communications are legally permissible, public disclosure of the communications would undoubtedly interfere with ODOC's ability to facilitate candid self-critical reviews that are essential to a robust quality assurance process and to improve patient outcomes. For these reasons ODOC objects to the inclusion in and resulting public disclosure of peer review statements and communications in DRO's report.

Based on our concerns, including legal constraints regarding the disclosure of protected health information and peer review communications, and in order to meaningfully respond to the factual inaccuracies and incomplete information contained in the draft report, as ODOC's Director I request that you and Executive Director Cornett meet with our medical professionals and management team in Salem to discuss the medical records and circumstances of Mr. Barton's care and treatment prior to finalizing and releasing DRO's investigative report. Only by doing so can you and DRO accurately and fairly understand, draw conclusions regarding, and report on the medical care and treatment provided Mr. Barton, and advance recommendations that DRO believes necessary or advisable for ODOC to consider moving forward. By doing so you and DRO can demonstrate your investment in continuing what has been a constructive, collaborative relationship with ODOC in addressing problems and concerns with the care and treatment of the adults in our custody that both our organizations seek to serve.

Please let me know if you and DRO are willing to meet with us to review and discuss the facts and medical records and circumstances of Mr. Barton's care and treatment prior to finalizing and releasing DRO's investigative report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colette S. Peters".

Colette S. Peters, Director
Oregon Department of Corrections

c: Jake Cornett, Executive Director
Disability Rights Oregon